

Internal Revenue Service, Treasury

§ 1.401(k)-0

§ 1.401(k)-0 Table of contents.

This section contains first a list of section headings and then a list of the paragraphs in each section in §§ 1.401(k)-1 through 1.401(k)-6.

List of Sections

- § 1.401(k)-1 Certain cash or deferred arrangements.
- § 1.401(k)-2 ADP test.
- § 1.401(k)-3 Safe harbor requirements.
- § 1.401(k)-4 SIMPLE 401(k) plan requirements.
- § 1.401(k)-5 Special rules for mergers, acquisitions and similar events. [Reserved]
- § 1.401(k)-6 Definitions.

List of Paragraphs

- § 1.401(k)-1 Certain cash or deferred arrangements.
 - (a) General rules.
 - (1) Certain plans permitted to include cash or deferred arrangements.
 - (2) Rules applicable to cash or deferred arrangements generally.
 - (i) Definition of cash or deferred arrangement.
 - (ii) Treatment of after-tax employee contributions.
 - (iii) Treatment of ESOP dividend election.
 - (iv) Treatment of elective contributions as plan assets.
 - (3) Rules applicable to cash or deferred elections generally.
 - (i) Definition of cash or deferred election.
 - (ii) Automatic enrollment.
 - (iii) Rules related to timing.
 - (A) Requirement that amounts not be currently available.
 - (B) Contribution may not precede election.
 - (C) Contribution may not precede services.
 - (iv) Current availability defined.
 - (v) Certain one-time elections not treated as cash or deferred elections.
 - (vi) Tax treatment of employees.
 - (vii) Examples.
 - (4) Rules applicable to qualified cash or deferred arrangements.
 - (i) Definition of qualified cash or deferred arrangement.
 - (ii) Treatment of elective contributions as employer contributions.
 - (iii) Tax treatment of employees.
 - (iv) Application of nondiscrimination requirements to plan that includes a qualified cash or deferred arrangement.
 - (A) Exclusive means of amounts testing.
 - (B) Testing benefits, rights and features.
 - (C) Minimum coverage requirement.
 - (5) Rules applicable to nonqualified cash or deferred arrangements.
 - (i) Definition of nonqualified cash or deferred arrangement.
 - (ii) Treatment of elective contributions as nonelective contributions.

- (iii) Tax treatment of employees.
- (iv) Qualification of plan that includes a nonqualified cash or deferred arrangement.
 - (A) In general.
 - (B) Application of section 401(a)(4) to certain plans.
 - (v) Example.
 - (6) Rules applicable to cash or deferred arrangements of self-employed individuals.
 - (i) Application of general rules.
 - (ii) Treatment of matching contributions made on behalf of self-employed individuals.
 - (iii) Timing of self-employed individual's cash or deferred election.
 - (iv) Special rule for certain payments to self-employed individuals.
 - (b) Coverage and nondiscrimination requirements.
 - (1) In general.
 - (2) Automatic satisfaction by certain plans.
 - (3) Anti-abuse provisions.
 - (4) Aggregation and restructuring.
 - (i) In general.
 - (ii) Aggregation of cash or deferred arrangements within a plan.
 - (iii) Aggregation of plans.
 - (A) In general.
 - (B) Plans with inconsistent ADP testing methods.
 - (iv) Disaggregation of plans and separate testing.
 - (A) In general.
 - (B) Restructuring prohibited.
 - (v) Modifications to section 410(b) rules.
 - (A) Certain disaggregation rules not applicable.
 - (B) Permissive aggregation of collective bargaining units.
 - (C) Multiemployer plans.
 - (vi) Examples.
 - (c) Nonforfeitability requirements.
 - (1) General rule.
 - (2) Definition of immediately nonforfeitable.
 - (3) Example.
 - (d) Distribution limitation.
 - (1) General rule.
 - (2) Rules applicable to distributions upon severance from employment.
 - (3) Rules applicable to hardship distributions.
 - (i) Distribution must be on account of hardship.
 - (ii) Limit on maximum distributable amount.
 - (A) General rule.
 - (B) Grandfathered amounts.
 - (iii) Immediate and heavy financial need.
 - (A) In general.
 - (B) Deemed immediate and heavy financial need.
 - (iv) Distribution necessary to satisfy financial need.
 - (A) Distribution may not exceed amount of need.
 - (B) No alternative means available.

§ 1.401(k)-0

- (C) Employer reliance on employee representation.
- (D) Employee need not take counter-productive actions.
- (E) Distribution deemed necessary to satisfy immediate and heavy financial need.
- (F) Definition of other plans.
- (v) Commissioner may expand standards.
- (4) Rules applicable to distributions upon plan termination.
 - (i) No alternative defined contribution plan.
 - (ii) Lump sum requirement for certain distributions.
- (5) Rules applicable to all distributions.
 - (i) Exclusive distribution rules.
 - (ii) Deemed distributions.
 - (iii) ESOP dividend distributions.
 - (iv) Limitations apply after transfer.
- (6) Examples.
- (e) Additional requirements for qualified cash or deferred arrangements.
 - (1) Qualified plan requirement.
 - (2) Election requirements.
 - (i) Cash must be available.
 - (ii) Frequency of elections.
 - (3) Separate accounting requirement.
 - (i) General rule.
 - (ii) Satisfaction of separate accounting requirement.
 - (4) Limitations on cash or deferred arrangements of state and local governments.
 - (i) General rule.
 - (ii) Rural cooperative plans and Indian tribal governments.
 - (iii) Adoption after May 6, 1986.
 - (iv) Adoption before May 7, 1986.
 - (5) One-year eligibility requirement.
 - (6) Other benefits not contingent upon elective contributions.
 - (i) General rule.
 - (ii) Definition of other benefits.
 - (iii) Effect of certain statutory limits.
 - (iv) Nonqualified deferred compensation.
 - (v) Plan loans and distributions.
 - (vi) Examples.
 - (7) Plan provision requirement.
 - (f) Special rules for designated Roth contributions.
 - (1) In general.
 - (2) Inclusion treatment.
 - (3) Separate accounting required.
 - (4) Designated Roth contributions must satisfy rules applicable to elective contributions.
 - (i) In general.
 - (ii) Special rules for direct rollovers.
 - (5) Rules regarding designated Roth contribution elections.
 - (i) Frequency of elections.
 - (ii) Default elections.
 - (6) Effective date.
 - (g) Effective dates.
 - (1) General rule.
 - (2) Early implementation permitted.
 - (3) Collectively bargained plans.
 - (4) Applicability of prior regulations.

26 CFR Ch. I (4-1-14 Edition)*§ 1.401(k)-2 ADP Test*

- (a) Actual deferral percentage (ADP) Test.
 - (1) In general.
 - (i) ADP test formula.
 - (ii) HCEs as sole eligible employees.
 - (iii) Special rule for early participation.
 - (2) Determination of ADP.
 - (i) General rule.
 - (ii) Determination of applicable year under current year and prior year testing method.
 - (3) Determination of ADR.
 - (i) General rule.
 - (ii) ADR of HCEs eligible under more than one arrangement.
 - (A) General rule.
 - (B) Plans not permitted to be aggregated.
 - (iii) Examples.
 - (4) Elective contributions taken into account under the ADP test.
 - (i) General rule.
 - (ii) Elective contributions for partners and self-employed individuals.
 - (iii) Elective contributions for HCEs.
 - (5) Elective contributions not taken into account under the ADP test.
 - (i) General rule.
 - (ii) Elective contributions for NHCEs.
 - (iii) Elective contributions treated as catch-up contributions.
 - (iv) Elective contributions used to satisfy the ACP test.
 - (v) Additional elective contributions pursuant to section 414(u).
 - (vi) Default elective contributions pursuant to section 414(w).
 - (6) Qualified nonelective contributions and qualified matching contributions that may be taken into account under the ADP test.
 - (i) Timing of allocation.
 - (ii) Requirement that amount satisfy section 401(a)(4).
 - (iii) Aggregation must be permitted.
 - (iv) Disproportionate contributions not taken into account.
 - (A) General rule.
 - (B) Definition of representative contribution rate.
 - (C) Definition of applicable contribution rate.
 - (D) Special rule for prevailing wage contributions.
 - (v) Qualified matching contributions.
 - (vi) Contributions only used once.
 - (7) Examples.
 - (b) Correction of excess contributions.
 - (1) Permissible correction methods.
 - (i) In general.
 - (A) Qualified nonelective contributions or qualified matching contributions.
 - (B) Excess contributions distributed.
 - (C) Excess contributions recharacterized.
 - (ii) Combination of correction methods.
 - (iii) Exclusive means of correction.
 - (2) Corrections through distribution.

- (i) General rule.
- (ii) Calculation of total amount to be distributed.
 - (A) Calculate the dollar amount of excess contributions for each HCE.
 - (B) Determination of the total amount of excess contributions.
 - (C) Satisfaction of ADP.
 - (iii) Apportionment of total amount of excess contributions among the HCEs.
 - (A) Calculate the dollar amount of excess contributions for each HCE.
 - (B) Limit on amount apportioned to any individual.
 - (C) Apportionment to additional HCEs.
 - (iv) Income allocable to excess contributions.
 - (A) General rule.
 - (B) Method of allocating income.
 - (C) Alternative method of allocating plan year income.
 - (D) Plan years before 2008.
 - (E) Alternative method for allocating plan year and gap period income.
- (v) Distribution.
- (vi) Tax treatment of corrective distributions.
 - (A) Corrective distributions for plan years beginning on or after January 1, 2008.
 - (B) Corrective distributions for plan years beginning before January 1, 2008.
 - (C) Corrective distributions attributable to designated Roth contributions.
- (vii) Other rules.
 - (A) No employee or spousal consent required.
 - (B) Treatment of corrective distributions as elective contributions.
 - (C) No reduction of required minimum distribution.
 - (D) Partial distributions.
- (viii) Examples.
 - (3) Recharacterization of excess contributions.
 - (i) General rule.
 - (ii) Treatment of recharacterized excess contributions.
 - (iii) Additional rules.
 - (A) Time of recharacterization.
 - (B) Employee contributions must be permitted under plan.
 - (C) Treatment of recharacterized excess contributions.
 - (4) Rules applicable to all corrections.
 - (i) Coordination with distribution of excess deferrals.
 - (A) Treatment of excess deferrals that reduce excess contributions.
 - (B) Treatment of excess contributions that reduce excess deferrals.
 - (ii) Forfeiture of match on distributed excess contributions.
 - (iii) Permitted forfeiture of QMAC.
 - (iv) No requirement for recalculation.
 - (v) Treatment of excess contributions that are catch-up contributions.
 - (5) Failure to timely correct.
 - (i) Failure to correct within 2½ months after end of plan year.
 - (ii) Failure to correct within 12 months after end of plan year.
 - (iii) Special rule for eligible automatic contribution arrangements.
 - (c) Additional rules for prior year testing method.
 - (1) Rules for change in testing method.
 - (i) General rule.
 - (ii) Situations permitting a change to the prior year testing method.
 - (2) Calculation of ADP under the prior year testing method for the first plan year.
 - (i) Plans that are not successor plans.
 - (ii) First plan year defined.
 - (iii) Successor plans.
 - (3) Plans using different testing methods for the ADP and ACP test.
 - (4) Rules for plan coverage changes.
 - (i) In general.
 - (ii) Optional rule for minor plan coverage changes.
 - (iii) Definitions.
 - (A) Plan coverage change.
 - (B) Prior year subgroup.
 - (C) Weighted average of the ADPs for the prior year subgroups.
 - (iv) Examples.
 - § 1.401(k)-3 Safe harbor requirements
 - (a) ADP test safe harbor.
 - (1) Section 401(k)(12) safe harbor.
 - (2) Section 401(k)(13) safe harbor.
 - (3) Requirements applicable to safe harbor contributions.
 - (b) Safe harbor nonelective contribution requirement.
 - (1) General rule.
 - (2) Safe harbor compensation defined.
 - (c) Safe harbor matching contribution requirement.
 - (1) In general.
 - (2) Basic matching formula.
 - (3) Enhanced matching formula.
 - (4) Limitation on HCE matching contributions.
 - (5) Use of safe harbor match not precluded by certain plan provisions.
 - (i) Safe harbor matching contributions on employee contributions.
 - (ii) Periodic matching contributions.
 - (6) Permissible restrictions on elective contributions by NHCEs.
 - (i) General rule.
 - (ii) Restrictions on election periods.
 - (iii) Restrictions on amount of elective contributions.
 - (iv) Restrictions on types of compensation that may be deferred.
 - (v) Restrictions due to limitations under the Internal Revenue Code.
 - (7) Examples.
 - (d) Notice requirement.
 - (1) General rule.
 - (2) Content requirement.
 - (i) General rule.
 - (ii) Minimum content requirement.

§ 1.401(k)-1

26 CFR Ch. I (4-1-14 Edition)

- (iii) References to SPD.
- (3) Timing requirement.
- (i) General rule.
- (ii) Deemed satisfaction of timing requirement.
- (e) Plan year requirement.
- (1) General rule.
- (2) Initial plan year.
- (3) Change of plan year.
- (4) Final plan year.
- (f) Plan amendments adopting safe harbor nonelective contributions.
- (1) General rule.
- (2) Contingent notice provided.
- (3) Follow-up notice requirement.
- (g) Permissible reduction or suspension of safe harbor contributions.
- (1) General rule.
- (i) Matching contributions.
- (ii) Nonelective contributions.
- (2) Supplemental notice.
- (h) Additional rules.
- (1) Contributions taken into account.
- (2) Use of safe harbor nonelective contributions to satisfy other nondiscrimination tests.
- (3) Early participation rules.
- (4) Satisfying safe harbor contribution requirement under another defined contribution plan.
- (5) Contributions used only once.
- (i) [Reserved]
- (j) Qualified automatic contribution arrangement.
- (1) Automatic contribution requirement.
- (i) In general.
- (ii) Automatic contribution arrangement.
- (iii) Exception to automatic enrollment for certain current employees.
- (2) Qualified percentage.
- (i) In general.
- (ii) Minimum percentage requirements.
- (A) Initial-period requirement.
- (B) Second-year requirement.
- (C) Third-year requirement.
- (D) Later years requirement.
- (iii) Exception to uniform percentage requirement.
- (iv) Treatment of periods without default contributions.
- (k) Modifications to contribution requirements and notice requirements for automatic contribution safe harbor.
- (1) In general.
- (2) Lower matching requirement.
- (3) Modified nonforfeiture requirement.
- (4) Additional notice requirements.
- (i) In general.
- (ii) Additional information.
- (iii) Timing requirements.
- § 1.401(k)-4 *SIMPLE 401(k) Plan Requirements*
- (a) General rule.
- (b) Eligible employer.
- (1) General rule.
- (2) Special rule.
- (c) Exclusive plan.

- (1) General rule.
- (2) Special rule.
- (d) Election and notice.
- (1) General rule.
- (2) Employee elections.
- (i) Initial plan year of participation.
- (ii) Subsequent plan years.
- (iii) Election to terminate.
- (3) Employee notices.
- (e) Contributions.
- (1) General rule.
- (2) Elective contributions.
- (3) Matching contributions.
- (4) Nonelective contributions.
- (5) SIMPLE compensation.
- (f) Vesting.
- (g) Plan year.
- (h) Other rules.
- § 1.401(k)-5 *Special Rules for Mergers, Acquisitions and Similar Events. [Reserved]*
- § 1.401(k)-6 *Definitions.*

[T.D. 9169, 69 FR 78154, Dec. 29, 2004, as amended by T.D. 9237, 71 FR 9 Jan. 3, 2006; T.D. 9324, 72 FR 21109, Apr. 30, 2007; T.D. 9447, 74 FR 8207, Feb. 24, 2009; T.D. 9641, 78 FR 68737, Nov. 15, 2013]

§ 1.401(k)-1 Certain cash or deferred arrangements.

(a) *General rules*—(1) *Certain plans permitted to include cash or deferred arrangements.* A plan, other than a profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan, does not satisfy the requirements of section 401(a) if the plan includes a cash or deferred arrangement. A profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan does not fail to satisfy the requirements of section 401(a) merely because the plan includes a cash or deferred arrangement. A cash or deferred arrangement is part of a plan for purposes of this section if any contributions to the plan, or accruals or other benefits under the plan, are made or provided pursuant to the cash or deferred arrangement.

(2) *Rules applicable to cash or deferred arrangements generally*—(i) *Definition of cash or deferred arrangement.* Except as provided in paragraphs (a)(2)(ii) and (iii) of this section, a cash or deferred arrangement is an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a) (including a contract